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MCQUAID, BEDFORD, BRAYTON, CLAUSEN & METZLER
ATTORNEYS AT LAW

AUG 18 1989

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Federal Communications Commission
Office of the Secretary

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STEVEN M. HAROWITZ
AUDREY A. SMITH
FRANCINE S. CURTIS

August 17, 1989

Larry D. Eads
Chief, Audio Services Division
FEDERAL COMMUNICATIONS COMMISSION
1919 M Street, N.W., Room 302
Washington, DC 20554

Re: KHTX-AM, Truckee, California (BP-871007AI)

Dear Mr. Eads:

This letter supplements the letter sent by this office on July 28, 1989, responsive to your June 29th inquiry about the status of the site move for KHTX, licensed to Truckee. In that letter, mention was made of certain facts concerning the efforts to find alternate sites. Exhibit B was referenced in that letter in support of many of the statements made therein. Exhibit B was prepared and but not signed by the deadline for replying to your letter, so the pertinent information was transmitted to this firm and the letter incorporated the information. Exhibit B has been finished and signed, and is attached hereto. In it you will see the applicant's five year effort to find a new site outlined in great detail.

The July 28 letter stated that KHTX's consulting engineer determined there was a substantial problem with synchronous transmitters. The additional material submitted herewith shows there was also a problem with locating a tower too near a 70 KV power line.

The letter discussed the industrial site and said applicant could not get permission to locate a tower on the site. An exhibit to the attachment shows that the landowner refused to make the parcel available to the station. While applicant thought that the site would be available, its hopes were never realized.

Finally, the issue (to the extent there is an issue) of why Sparks was chosen, is also addressed by the engineer. The file in this case is replete with information as to the degree of difficulty in getting anything through the Tahoe Regional Planning Agency ("TRPA"). TRPA is one of the few bi-state agencies, and certainly one of the most stringent land use boards in the United States. It sees its mission as preserving the Lake Tahoe Basin from any change whatsoever. Getting additional land zoned for

AUG 22 1989

AM BRAYTON

Larry D. Eads
FEDERAL COMMUNICATIONS COMMISSION
August 17, 1989
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something as environmentally obtrusive as a tower several hundredfeet in the air, lighted and painted in accordance with FCC and FAA regulations would truly be "Mission Impossible".

I have enclosed a copy of our July 28, 1989 letter as a reference. If there are any questions, please contact the undersigned.

Very truly yours,

McQUAID, BEDFORD, CLAUSEN & METZLER



ROGER J. METZLER

RJM/fc
Enclosure
cc: Service List (attached)
KHTX Public File
A. Thomas Quinn

Alex D. Felker
Chief, Mass Media Bureau
FEDERAL COMMUNICATIONS COMMISSION
1919 M Street, N.W., Room 314
Washington, DC 20554

Thomas N. Albers, Esq.
Chief, AM Branch
FEDERAL COMMUNICATIONS COMMISSION
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July 28, 1989

Larry D. Eads
Audio Service Division
Mass Media Bureau
Federal Communications Commission
Washington, D.C. 20554

Re: KHTX AM, Truckee, California
Americom, A California Limited Partnership
File No. BP-871007AI for Modification of
Construction Permit

Dear Mr. Eads:

This letter is in response to your letter of June 29, 1989 requesting additional information regarding Americom's efforts to obtain a suitable site in Truckee.

You asked for information about "Site 3", about the industrial area, and about a synchronous transmitter.

As to "Site 3", Americom has expended substantial time, effort and money in attempting to develop this site. Despite its best efforts to do so, it has been unable to construct a tower on the site.

"Site 3" is zoned to permit radio towers, but each needs a special permit. Site 3 is located next to a residential housing project. After losing its lease on its original site, Americom asked for a variance to erect a 400 foot tower on Site 3. Americom received approval from the Planning Commission for the variance and began preparing the land to erect a tower. During the preparations for erecting the tower, one of the nearby residents of the housing project noticed the activity and began an investigation. His investigation led to the conclusion that a public notice and hearing was required before such variance could be issued, and that the proper procedure had not been followed. The County Planning Commission acknowledged that it failed to follow the required process but nonetheless advised Americom to continue with the construction. Americom then sought the advice of two different law firms. Both came to the conclusion that the variance was improper, and that building pursuant to that variance was not

Larry D. Eads
July 28, 1989
Page 2

authorized. Further, both believed that building the tower after having been informed of the invalidity of the process exposed Americom to substantial losses. After consultation with local counsel, Americom determined that if it were to continue with the construction it would face opposition from the homeowners and would not have the right to build a 400 foot tower. Lawyers investigating on behalf of the homeowners have also stated that there was a similar defect in the approval of the 200 foot tower that Americom sought as a temporary tower (See Exhibit A).

Further, the homeowners are so opposed to any construction at the site that they would make all efforts to stop construction. If Americom were to try to build a tower under 200 feet in height it would face substantial resistance from the local homeowners who appear to be well organized. While the lease may not make any mention of tower height, all building requires local permits. Thus the local opposition has effect. Americom has invested approximately \$30,000 in this site, but has reluctantly come to the conclusion that it cannot and will not ever be able to build a radio tower as near to the homes as that site is located. This site is the only one on which the local zoning even contemplates radio towers. Americom has been advised that no other sites are even likely to be considered.

Americom has investigated other sites in the Truckee area. Reporting on those is reporting on the "industrial" site and on the synchronous transmitter, and the synchronous transmitter was being proposed in an "industrial" area near Truckee which presents similar problems. Truckee sees itself as a rural western town and wishes to preserve its quaintness and "pleasing" environment. The "industrial" area is primarily a saw mill. Americom was unable to get permission to locate a tower on the site, nor was there, upon investigation, any alternative site that could be used for a synchronous transmitter. Finally, Americom's engineer, after talking to various people in and out of the FCC, felt that the synchronous transmitter would not work in the Truckee area. Among other problems, all applications seeking synchronous transmitters have been required to propose minimum efficiency antennas, and Americom can not get permission to erect a tower tall enough to meet the Commission's antenna efficiency standards. If Americom could get a minimum height tower approved, it would put the main transmitter at the site.

Because KHTX AM is Class IV station broadcasting at a maximum of 1,000 watts, its antenna tower must necessarily be very close to the community it serves. Sites outside of Truckee proper are impossible to develop both due to the prohibitive expense of getting power to the site and to the zoning prohibitions that prevent construction of both the power lines and the towers.

Larry D. Eads
July 28, 1989
Page 3

Constructing within Truckee appears to be next to impossible because of the opposition of the residents (see statement of KHTX Chief Engineer, Exhibit B). All of this has been presented to the Commission, both in the pleadings seeking waivers for coverage of the city of license and in the pleadings responsive to Mr. Constant's Petition to Deny the city of license. The Commission's response was to suggest another city of license.

Americom agreed with the Commission's suggestion that it must relocate to another community. In searching for other possible locations for relocation the most obvious appears to be the Lake Tahoe Basin. However, this area poses the same problems as Truckee with the additional problem of environmental delicateness. The Lake Tahoe Basin has recently been through a period of construction

Larry D. Eads
July 28, 1989
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To respond to the question regarding "alternative" communities: None of the so-called "communities" along Interstate Highway 80 are anything more than a grouping of condominiums, ski areas and a general store. Sparks has a population of 40,780 in the last census. It has grown since then (Verdi, along Highway 80, by contrast, has a population of 1,256). It is noteworthy that the opposition of Fred Constant, even when challenged to find a suitable site for service to Truckee, never found a site. Americom has diligently pursued serving the public interest in the Truckee area but has come to the conclusion that an AM station and its tower can not be built in Truckee. Americom has researched the alternatives and expended considerable effort in coming to the conclusion that relocation to Sparks will best serve the public interest.

Respectfully submitted,

McQUAID, BEDFORD, CLAUSEN & METZLER



PETER N. PELAVIN

PNP/fc
Enclosure

JUL 28 '89 14:39 EDT

P.2

SCHNEIDER, COLLINSON & LANGE

ATTORNEYS AT LAW

Michael J. Schneider, Inc.
Michael J. Collinson
Michael A. Lange

September 7, 1984

Reply to

120 Richardson St. Suite A
Grass Valley, CA 95945
(916) 273-4474

P.O. Box 8550
10038 Meadow Way, Suite C
Truckee, CA 95737
(916) 587-9233

Don Riolo, Planning Director
Nevada County Planning Department
10433 Willow Valley Road
Nevada City, CA 95959

RE: City News Service of Los Angeles, Inc.
Application for 200' Radio Tower

Your File: U83-35
EIS83-60

Dear Mr. Riolo:

As stated at the zoning administrator's hearing on September 6th, 1984, this office has been contacted by the Panonnia Ranchos Homeowners Association concerning the above referenced radio transmission tower. Since that hearing, this office has also been retained by Don & Carol Orme as individuals concerning KTRT's attempt to construct an approximate 200' radio tower.

Since the September 6th hearing, this office has further investigated the original application for the 200' tower and has noticed at least one discrepancy in the procedures to be followed by the county in this matter. Specifically, Don & Carol Orme who have owned Parcel 16-602-33-09 since August of 1981 did not receive notice of the rezoning application or application for conditional use permit. The records this office has obtained indicates that the Planning Department contacted George Gardai, who was the original developer of Panonnia Ranchos.

Because the Ormes are within two parcels of the subject parcel, they should have received notice and did not receive that notice. There does, therefore, appear to be a defect in the notice given with the original approval of the 200' tower. As you are probably aware, recent case law has confirmed the property owners absolute right to receive notice and any defect in that notice makes the subsequent hearing invalid.

This office is continuing its investigation concerning this entire matter. We simply desire to put you on notice at this time of the apparent defect in the notice and hearing procedures

EXHIBIT A

Don Riolo, Planning Director
September 7, 1984
Page 2

so you can begin your own investigation. Additionally, we are copying the applicant, City News Service of Los Angeles, Inc., so that they will likewise be aware of the defective procedure that was followed so that they will not suffer any damages by being required to remove any construction which may commence in the interim.

If you wish to discuss this matter, please do not hesitate to contact this office. I would like to thank you in advance for your courtesy and cooperation and prompt attention to this situation.

Yours truly,

SCHNEIDER, COLLINSON & LANGE

Brent P. Collinson
BRENT P. COLLINSON

BPC/jrs

cc Don & Carol Orme
Panonnia Ranchos Homeowners Assn.
Pat Sutton, Supervisor District 5
City News Service of L.A., Inc.
KTRT, ATTN: Tom Quinn ✓

EXHIBIT A

August 4, 1989

STATEMENT BY FREDERICK H. GILES, CHIEF ENGINEER OF KHTX.

This document's purpose is to clarify the amount of time and effort put in to the searching for a transmitter site for KHTX-AM.

Not long after my employment with KHTX, I was asked to become involved with the planning and construction of a new transmitter site. The owner, Mr. Quinn, and the General Manager, Carl Krass, had already gone to considerable trouble and expense to re-zone, lease, and obtain a use permit for land on which to construct the site. At that point, Mr. Crass and I engaged ourselves in the local PUD meetings to obtain utilities in the most efficient manner.

It was at this point that we encountered our first sign of local resistance.. The housing developer of the development to the south, repeatedly delayed progress because of his insistance on our burying our power cables. (see exhibit A) After this was resolved, I became involved with building plans, utilities plans, and general engineering. I would like to say at this point, that in this peroid of time, there was a total committment of money and time on this project.

EXHIBIT B TO LETTER OF JULY 28, 1989

After quite some time of planning, I started actual construction of the ground system along with excavation for the building foundation. This was when we ran into legal problems with the home owners association as previously reported.

After the zoning meeting of Sept. 6, 1984, it became increasingly apparent that it would be prudent to pursue an alternate site in case we were to run into overwhelming legal opposition and costs.

Over the next couple of years, I tried to find an



Mr. Zads of the Commission in his letter of June 29, 1989, inquired about three specific avenues proposed by us in December of 1986 .I shall list them below in numerical order and address them in that order

1. SYNCHRONOUS TRANSMITTER
2. INDUSTRIAL AREA SITE
3. SITE 3

Item 1. The original thinking on this site was to get very close in to the downtown part of Truckee with a very low profile installation. This was really pursued because our options were appearing to wane. The property had just been purchased in a tax sale. The parcel was literally covered with junked heavy machinery ,with occasional trucks or automobiles. When we first approached the owner, he said that he would be cleaning the parcel up so that perhaps a ground system could be installed. This never happened. As a matter of fact, the parcel is still in it's original condition as of the current date. As a secondary note, there was a problem with a Southern Pacific easement that encroached more than the new owner had figured. Because the property is triangular in shape, this would have squeezed the tower too close to a 70 KV Sierra Pacific transmission line.

Item 2. This, in my opinion, is the only realistic location for the site. It is away from most housing, utility poles are relatively close, and it is already occupied by the Tahoe Truckee Sanitation Agency. However, one can see by exhibit 2, that this is for all intents and purposes, out of the question. I might add that sanitation agency has the lease on a extremely large expanse of land just to the east of Truckee all of which would be perfect for our site , so when we were turned down , it eliminated many, many parcels.

Item 3. This item was addressed by in large in the main body of our report.


One other question the commission had, was why we had chosen Spokane for our city of 100,000. While it appears on a map

The whole reason for the creation of this agency was to scrutinize all construction. Of course, the communities in this area are extremely mindful in keeping the esthetics as first priority, since most everybody moved there for this very reason. So what we are up against in the Tahoe Basin is the same set of potential community problems that we found in Truckee, compounded by very tight environmental restrictions.

In high contrast is Sparks, a traditional industrial town, which is sometimes referred to as "Railroad City". Large portions of the city are used for industrial parks. It is a growing city with continually increasing needs. The community opposition problem would not exist because this area is not the relatively closed in area that exists in Truckee and the Lake Tahoe Basin, and the environmental impact would be negligible because the proposed site borders the Great Basin desert.

EXHIBIT B TO LETTER OF JULY 28, 1989

In closing I would like to say that many hours of searching and follow up were performed on dead end avenues, besides these items listed above. After expending so much time and





Reno/Lake Tahoe

P.O. Box 1365 • 24 Highway 28
Crystal Bay, NV 89402
702/831-5102 • 916/546-5936



Truckee/Lake Tahoe

May 15, 1984

EXHIBIT A

Truckee Donner Public Utility District
P. O. Box 309
Truckee, CA 95734

Gentlemen:

This report was prepared to familiarize P.U.D. board members with the KTRT item on the agenda for the 21st of May.

The December Group, owner of KTRT radio in Truckee, is building a new transmitter site on State owned land (assessor parcel #16-120-17) just north of Ponnonia Ranchos #2 subdivision. Construction of a new site was decided upon because this move would greatly increase the coverage of KTRT, which is Truckee's only radio station. This in turn would promote a greater community awareness, increase local commerce and allows a stronger position to serve the public interest.

Because of the proximity of P.U.D. power poles in Ponnonia Ranchos, we wish to access power from this area. There seems to be no problem with this approach, except for one small 400' portion that exists between lots one and two of the subdivision.

Mr. George Gardia, who developed Ponnonia Ranchos, does not wish us to install an above ground system in this area, even though all existing power distribution is above ground throughout the subdivision. Mr. Gardia has already consented to P.U.D. easements between lots, and since all existing power distribution is above ground, we see no reason why we need to go through considerable additional expense for an underground installation in this area.

After talking with a number of companies, including Harker and Harker, the general consensus is that an underground installation will run at the very least three times that of an above ground system. An approximate above ground cost runs about \$1,500 to \$2,000. This means an underground system would run between \$4,500 and \$6,000, and possibly more. We feel that because this increased cost is, by contrast, so large, it is unreasonable.

Mr. Gardia's premise is that the above ground system is unsightly. Our premise is that the existing distribution system is viewable from most lots already. We must keep in mind that these are approximately five acre parcels, so the proposed system will not come in close proximity to any structures, future or otherwise.

One last item of mention is that this proposed system only requires one pole to be placed midway down the easement. also, being a single phase system, only two wires are needed.

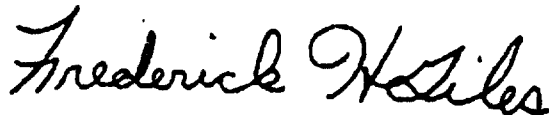
EXHIBIT B TO LETTER OF JULY 28, 1989

Truckee Donner Public Utility District
May 15, 1984
Page 2

Since no precedent has been established that requires certain P.U.D. customers to construct underground facilities when above ground facilities are already established as the norm, we respectfully ask the P.U.D. to authorize our proposed above ground system.

I wish to thank all P.U.D. board members for their time in considering this matter. I hope I have presented it in a clear and concise manner.

Sincerely,

A handwritten signature in cursive script that reads "Frederick H. Giles". The signature is written in dark ink and is positioned above the typed name and title.

Frederick H. Giles
Chief Engineer



TAHOE-TRUCKEE SANITATION AGENCY

A Public Agency
 Martin Valley
 P.O. Drawer "B"
 TRUCKEE, CALIFORNIA 95734
 (916) 587-2525

Directors
 Albert J. Burghardt
 O.R. Sumnerfield
 John E. Forsberg
 Joseph G. Martillac
 Jerry Tippin
 General Manager
 Craig F. Woods

August 2, 1989

EXHIBIT B

Mr. Fred H. Giles
 Americom
 255 W. Moana Lane, Suite 208
 Reno, NV 89509

Re: Erection of Radio Broadcast Tower

Dear Mr. Giles:

In regards to your latest inquiry regarding the Tahoe-Truckee Sanitation Agency land for the erection of a radio broadcast tower, I am sorry to inform you that our policy has not changed since your first inquiry in 1986.

We have reserved all of our parcels for the future development of this agency or associated industry.

As before, we continue to have reservations with a high tower and the close proximity of the Truckee Tahoe Airport.

In the event that our policy changes, we invite you to contact this office, however, it would appear that that possibility is very remote.

Sincerely,

Craig F. Woods
 General Manager/Chief Engineer

CFW/bb

EXHIBIT B TO LETTER OF JULY 28, 1989

NORTH TAHOE • TAHOE CITY • ALPINE SPRINGS • SQUAW VALLEY • TRUCKEE